28

D.B. CIVIL SPECIAL APPEAL NO.700/2006.
[MUNICIPAL BOARD, JALORE VS. DINESH KUMAR & ANR.]

DATED :13/12/2006.

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS J.

Mr.J.M.Bhandari for the appellant.
Mr.S.P.Bhati for Mr.Rakesh Arora for the respondent.

*****

Heard learned counsel for the parties.

This appeal is directed against the judgment of learned Single Judge dated 31.08.2005 modifying the award made by Labour Court in Labour Case No.74/1996.

The respondent workman was a daily rated workman under the appellant Municipal Council, Jalore. He had been appointed as a Sweeper in October 1989 and his services were brought to an end w.e.f. 01.12.1990. That is to say that he was in service for about 13 months. The termination was affected without notice or emoluments for notice period and without payment of retrenchment compensation as envisaged under Section 25 F of the Industrial Disputes Act, 1947. On dispute having been raised, the same was referred to the Labour Court, Jodhpur. The learned Labour Court vide its award dated 10.11.1998 found the retrenchment to be invalid having been affected in violation of Section 25 F of the Act of 1947 but considering the short period of service and the time elapsed between th date of termination of service and the

reference having been made to the Labour Court and the date of its adjudication opined that reinstatement would not be appropriate remedy in case of daily rated workman at this distance of time. Instead Rs.25,000/- was allowed as a lump sum compensation in lieu of all his claims.

The award dated 10.09.1998 was challenged by way of writ petition No.4389/1998. By order dated 31.08.2005 which is under appeal the learned Single Judge by referring to earlier decision in Prithvi Raj's case modified the award by directing reinstatement of the workman and continuity in service and full back wages. Hence this appeal.

We are of the opinion that the substitution of award was not justified. Merely by referring to the earlier judgment, facts of which have not been placed before us for considering comparative service chart and other attending circumstances to draw a parallel. What relief is to be given in the particular case depends on facts and circumstances of that case and cannot depend on straight jacket formula by referring to an earlier judgment. The recent judgments of the Supreme Court makes it clear that the reinstatement in the case of retrenchment cannot be granted as a matter of course but depend on variable circumstances which include the length of service rendered before the illegal termination of services, the reason for such retrenchment the alleged non-compliance of the provisions, the distance of time between date of retrenchment and the date of raising dispute and the time at which the relief is

actually to be accorded. By no means the enumeration is exhaustive of devising appropriate relief in case of illegal retrenchment.

Considering the circumstances of the present case, we are of the opinion that it was not a fact in which retrenchment ought to have been substituted when Labour Court has given cogent reasons for the reinstatement to be inappropriate. The learned Single Judge has erred in awarding reinstatement as a matter of course, without taking into consideration the circumstances emerging from case and without considering whether relief granted by the Labour Court is so inadequate as to call for interference.

Consequently, the directions to reinstate the workman with continuity of service by directing the employer to treat the workman in continuous employment from the date of his initial appointment and also to reinstate the petitioner in service with back wages for the period he remained out of employment as a consequence of his illegal retrenchment are set aside. However, considering the facts and circumstances, award of Rs.25,000/- appears to be inadequate and is enhanced to Rs.35,000/-. That will settle all the claims in respect of illegal retrenchment. The said amount, after adjusting any amount if already paid to the respondent by the employer against the award of Labour Court, shall be paid to the respondent by the appellant within two months from today failing which it shall bear interest @ 9% per annum from the date of this order.

With these observations the appeal stands disposed of.

[GOPAL KRISHAN VYAS],J. **[RAJESH BALIA], J.**

mamta